

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

KENNEDY WILLIAM MILLER,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. _____
)
CHINENYE UCHENDU, M.D.,)
METHODIST HEALTHCARE MEMPHIS)
HOSPITALS d/b/a METHODIST)
LE BONHEUR HEALTHCARE, and)
METHODIST HEALTHCARE)
FOUNDATION,)
)
Defendants.)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441(a), *et seq.*, Defendants Methodist Healthcare Memphis Hospitals d/b/a Methodist Le Bonheur Healthcare and Methodist Healthcare Foundation ("Methodist" or "Defendants"), by and through counsel, file this Notice of Removal from state court to this Court. In support of this Notice, Methodist respectfully states as follows:

NOTICE OF REMOVAL IS TIMELY FILED

1. On February 15, 2013, Plaintiff Kennedy William Miller ("Plaintiff") commenced a civil action in the Circuit Court of Shelby County, Tennessee ("the State Court"), bearing the style *Kennedy William Miller v. Chinenye Uchendu, M.D., Methodist Healthcare Memphis Hospitals d/b/a Methodist LeBonheur Healthcare, and Methodist Healthcare Foundation*, Docket Number CT-000669-13 ("the Civil Action"). (*See* Compl. [included in Ex. A, which is attached hereto]). Methodist Healthcare Memphis Hospitals d/b/a Methodist Le Bonheur

Healthcare was served on February 19, 2013. (*See* Return of Summons for Methodist Healthcare Memphis Hospitals [included in Ex. A]). Methodist Healthcare Foundation was also served on February 19, 2013. (*See* Return of Summons for Methodist Healthcare Foundation [included in Ex. A]). Methodist has filed this Notice of Removal within thirty (30) days of receiving service of this lawsuit. Therefore, this Notice of Removal is timely under 28 U.S.C. § 1446(b).

2. Plaintiff's Complaint includes a claim under the Emergency Management Treatment and Active Labor Act ("EMTALA"). 42 U.S.C. § 1395dd.

3. EMTALA is a law of the United States. Therefore, this Court has original jurisdiction of this civil action pursuant to 28 U.S.C. § 1331.

4. Because this Court has original jurisdiction over this civil action, removal is proper pursuant to 28 U.S.C. § 1441.

5. Pursuant to 28 U.S.C. § 1446(a), Methodist is attaching to this Notice of Removal a copy of all process, pleadings, and orders served on them in the Civil Action to date. (*See* Ex. A; Ex. B).

6. This Civil Action is still pending in the State Court.

7. Methodist has, to date, made no appearance in the Civil Action in State Court.

8. As of the filing of this Notice, it is Methodist's understanding and belief that Defendant Chinenye Uchendu, M.D. ("Uchendu") has not been properly served with process. No return of service has been filed in the State Court action. Undersigned counsel has attempted to locate Defendant Uchendu at the address listed on the Complaint and was unsuccessful. Therefore, Defendant Uchendu is not a defendant properly joined and served such that he must join or consent to the removal of this action at this time. Therefore, Methodist is in compliance with 28 U.S.C. § 1446(b)(2).

9. The State Court in which this action was commenced – the Circuit Court of Shelby County, Tennessee – is within this Court’s judicial district. Therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1441(a).

10. Methodist is serving written notice of the removal of this action to Plaintiff and the Circuit Court of Shelby County by filing a Notice of Filing Notice of Removal (a copy of which is attached hereto as Ex. B), together with a copy of this Notice of Removal, as provided under 28 U.S.C. § 1446(d).

WHEREFORE, Methodist prays that the Civil Action now pending against it in the Circuit Court of Shelby County, Tennessee, be removed therefrom to this Court.

Respectfully submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

s/Chad D. Graddy

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*Attorneys for Defendants Methodist
Healthcare Memphis Hospitals d/b/a
Methodist Le Bonheur Healthcare and
Methodist Healthcare Foundation*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been mailed via U. S. Mail, postage prepaid this the 8th day of March, 2013, to the following:

Rachael E. Putnam
Austin T. Rainey
2148 Monroe Ave.
Memphis, TN 38104

s/ Chad D. Graddy